

US EPA ARCHIVE DOCUMENT

U.S. Environmental Protection Agency

Contingency Plan for Shutdown

April 2011



EPA CONTINGENCY PLAN FOR SHUTDOWN OF THE AGENCY DUE TO A FUNDING HIATUS

April 2011

1. **PURPOSE.** The U.S. Environmental Protection Agency (EPA) occupies approximately ten million square feet of space in 175 facilities in fifty states and four territories. EPA facilities consist of office, laboratory, and warehouse space. The largest facilities are the Headquarters facilities located in the Washington, DC Metropolitan Area, the ten Regional Offices that support and manage EPA's environmental policies and programs in the states, and the two major research centers situated in Research Triangle Park, North Carolina, and Cincinnati, Ohio.

This contingency plan provides general guidelines for the orderly handling of EPA operations in the event of a funding hiatus caused by the lack of appropriations. In the event of an actual shutdown where EPA is required to implement this general guidance, supplemental government-wide guidance issued by the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), and the General Services Administration (GSA) also apply.

2. **AUTHORITY.** In the event of a funding hiatus due to the lack of an appropriations act or a continuing resolution, an agency may only continue those activities that are exempted or excepted. An Agency may exempt activities from the shutdown if the activities are funded with unexpired appropriations where carryover funds remain unobligated or where the source of funds is fees and payments that are available for obligation. Approved exempted activities may only continue as long as there are funds available to support the exempted activities.

The Antideficiency Act ("ADA") at 31 USC 1341, 1342 authorizes agencies to incur obligations in advance of appropriations. In certain "excepted" situations:

- A. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations.
- B. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property.
- C. The function is necessary to the discharge of the President's constitutional duties and powers.

There are also a limited number of government activities that an agency must continue, in the absence of appropriations, because their continuation is "necessarily" implied from the authorized continuation of other (exempt or excepted) activities.

OMB Circular A-11, Section 124 requires agencies to develop and maintain plans for an orderly shutdown in the event of the absence of appropriations. Plans must be submitted to OMB and include the following information:

1. Estimated time (to the nearest half-day) to complete any shutdown:

While most shutdown activities can be accomplished within 4 hours, some Agency shutdown personnel may need to work longer to secure and shutdown EPA property and facilities, including our varied laboratory research facilities and experiments that EPA is conducting. EPA expects the vast majority of shutdown activities will be completed in less than 5 days.

2. Number of employees expected to be on-board before implementation of the plan.

Permanent Employees	17,324
Full Time	16,736
Intermittent	4
Part Time	584
Temporary Employees	397
Full Time	269
Intermittent	1
Part Time	127
Total (as of April 7, 2011)	17,721

3. Total number of employees to be retained under the shutdown plan because:
 - a. They are engaged in military, law enforcement, or direct provision of health care activities: **153**
 - b. Their compensation is financed by a resource other than annual appropriations: **EPA estimates 856 employees (78 Headquarters and their field and laboratory components and 778 Regional) may perform exempted activities as identified in Section 6. This represents 4.83% of EPA's on-board employees.**
4. Number of employees, not otherwise exempt, retained for excepted activities (e.g., employees ensuring the safety of human life and protection of property, etc): **EPA estimates 804 employees (462 Headquarters and their field and laboratory components and 342 Regional) will perform excepted activities. This represents 4.77% of EPA's on-board employees less exempted employees.**

The policies and procedures detailed in this Contingency Plan are issued in accordance with OMB Circular A-11, Section 124; OMB Bulletin 80-14, dated August 28, 1980 (as amended by the OMB Director's memorandum of November 17, 1981 and Supplement 1 to Bulletin 80-14, dated August 20, 1982). They are also consistent with the following U.S. Department of Justice, Office of Legal Counsel opinions: "Applicability of the Anti-deficiency Act Upon a Lapse in an Agency's Appropriations" (1980), "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations" (1981), and an opinion dated Aug. 16, 1995, that reaffirms and updates the 1981 opinion.

3. **COVERAGE.** In the event of a funding hiatus caused by the lack of either an appropriations act or a continuing resolution, all EPA programs must follow this guidance. Four actions will be taken. These actions involve conducting (A) furlough activities; (B) shutdown activities; (C) excepted activities, and (D) exempted activities.
 - A. **FURLOUGH ACTIVITIES:** All employees will be advised to come to work to secure their workstations and return home, unless otherwise notified.
 - B. **SHUTDOWN ACTIVITIES:** Some personnel will be designated as necessary to complete tasks for the orderly shutdown of the Agency and will continue to report until such time as their shutdown tasks have been completed.

- C. **EXCEPTED ACTIVITIES:** Some activities and functions will continue because they are authorized by law or fall within the ADA's emergency exception. The personnel carrying out these activities may work even in the absence of an appropriation. These functions are described in more detail in Section 5 of this Contingency Plan.
- D. **EXEMPTED ACTIVITIES:** Certain programs funded with unexpired appropriations where carryover funds remain unobligated or where the source of funds is fees and payments that are available for obligation, may be exempted. See Section 6.

4. **EMPLOYEE REPORTING PROCEDURES**

- A. **ALL PERSONNEL:** In the event of an appropriations hiatus, all personnel will report for duty on the first working day following the expiration of an appropriations act or a continuing resolution (including employees on approved flexiplace) unless notified otherwise or unless they are on previously approved annual or sick leave. On that day, all personnel not designated to carry out shutdown, excepted, or exempted activities will be furloughed. Furlough Notices will be distributed to each employee. A copy of the Furlough Notice is attached in Appendix A. All personnel receiving Furlough Notices will be dismissed and directed not to report to work until an Appropriations Act or a Continuing Resolution is enacted. In accordance with OPM policy, employees do not need to be notified ahead of time if the furlough is due to the lack of an appropriations act. However, the Agency will make every effort to notify all employees adversely affected by the furlough and adhere to related collective bargaining agreements. Appropriate action placing affected Agency employees in a non-pay status will be taken. Additionally, any approved leave during a furlough will be cancelled and any new requests for leave during the furlough will be denied.

Only personnel required for the orderly shutdown of the Agency or assigned to excepted or exempted functions should continue to report for duty. All other personnel must depart following their dismissal after they have secured their work space and documents and entered their time into the Agency's Time & Attendance System, if required. EPA estimates that these activities should take less than one-half workday (4 hours).

In accordance with the ADA, no employees on furlough will be authorized to work or volunteer their services during the shutdown period.

- B. **SHUTDOWN PERSONNEL:** Personnel designated for the orderly shutdown of the Agency will continue to report for duty until such time as their shutdown tasks have been completed. Shutdown activities will need to be completed as expeditiously as possible. Once the services of these employees are no longer required, shutdown personnel will also be furloughed. Any obligations for shutdown activities will be paid after a new appropriation is provided. Shutdown activities are described in more detail in Section 7.B.
- A. **EXCEPTED PERSONNEL:** Personnel who are required to perform excepted activities such as ensuring the safety of human life and the protection of property (including the protection of government property) where the threat to life or property is imminent will continue to report following a shutdown. Excepted activities are described in more detail in Section 5. By law, excepted activities may continue to be performed. Any obligations incurred for excepted activities will be paid for after a new appropriation is provided.
- B. **COMMISSIONED OFFICERS:** Commissioned officers are employees of the Public Health Service (PHS). If EPA has a lapse in appropriations, PHS officers will either return to the

Department of Health and Human Services (HHS) or continue to work at EPA because they are on EPA's excepted or exempted personnel list.

- C. **EXEMPTED PERSONNEL:** Personnel who perform exempted activities and who are exempted from the shutdown order will continue to report for duty and conduct their assigned responsibilities until available carryover funds are close to being fully obligated or funds from fees and payments are near liquidation.

EPA retains the authority to modify lists of personnel working on excepted or exempted activities, as necessary, during any period of shutdown.

5. **EXCEPTED ACTIVITIES:** All Senior Resource Officials (SROs) must develop and submit a list of personnel who would be necessary to perform excepted activities including those following shutdown. Additional information concerning this list is found under Section 7.A

When determining which personnel are needed to carry out excepted operations, SROs should consider those personnel necessary to carry out activities such as those identified in the government-wide examples listed below. Among these are personnel required to ensure compliance with OMB Bulletin 80-14, Supplement No.1, and attachments thereto.

Primary examples of activities related to EPA that the Agency may continue to perform following shutdown are:

- A. Provide for homeland and national security, including the conduct of foreign relations essential to the national security; or
- B. Voluntary or personal services necessary to respond to emergencies involving the safety of human life or the protection of property, where the threat to human life or property is imminent, including:
 - 1. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
 - 2. Protection of federal lands, buildings, equipment, research property, and other property owned by the United States;
 - 3. Law enforcement and criminal investigations; and
 - 4. Emergency and disaster assistance.
 - 5. Support Staff: Only the minimum staff and support services necessary to continue the above listed functions should be maintained.

The specific excepted activities, personnel, and level of support required based on the examples above will be determined by the Office of Administration and Resources Management (OARM) in consultation with the Office of the Chief Financial Officer (OCFO), the Office of General Counsel (OGC) and appropriate program offices.

Excepted personnel are excluded from furlough during shutdown **but only for the hours/days it takes them to perform their excepted activities.** If a function requires one hour per day, then the excepted employee may work for only one hour per day to perform only that excepted task.

Specific examples of excepted activities include:

Excepted Activities to Support Superfund Response Site Work

Imminent threat to Public Health – Sites/Projects, predominantly associated with the Superfund program, where a failure to maintain operations would pose an imminent threat to human life. The sites/projects require EPA personnel to direct or oversee the response activities and/or provide critical support functions. There is an expectation that EPA presence or activities, typically by an On Scene Coordinator (OSC) or Remedial Project Manager (RPM) will be required. EPA will evaluate more than 800 Superfund sites to determine how many meet this criterion. *(For example, if ceasing the operation of an acid mine drainage treatment plan would cause a release to a stream that provided drinking water to a community; the Agency would consider that situation to pose an imminent threat. A second example is an emergency removal response to a situation posing an imminent threat to human health.)*

EPA Laboratories

EPA maintains 39 Program and Regional Laboratories across the Continental United States. These laboratories have unique functions that support the Agency in fulfilling its mission to safeguard human health and protect the natural environment. EPA will take necessary measures to ensure the physical integrity of EPA's research property is protected where, without these measures, the property would be damaged or destroyed. In order to protect research property and stand alone facilities, personnel will be **excepted** as needed to ensure critical operating requirements are not impaired. These needs are as far-ranging as ensuring the physical protection of federal property, that controlled environments (such as freezers) will function and not be damaged, that scientific instrumentation will function and not be impaired, and that lab animals, plants, and other unique test organisms will not be damaged or destroyed.

Laboratory operations involved in the toxicity testing of environmental samples requires the use of unique test organisms such as fathead minnow and small crustaceans. The test organisms must be grown under controlled laboratory conditions such as temperature, light, water quality and food supply in order to provide reproducible results during testing. Depending on the test organism, a period of weeks or months under controlled growing conditions is required for the organism to reproduce. Personnel will be excepted as needed in order to protect the physical integrity of the test organisms so that a shutdown will not result in the loss of viable test organisms.

The responsibilities for many of these laboratory- related excepted activities will be shared between several individuals, splitting work on an as needed basis whenever possible.

Emergency Response Readiness Operations

EPA's Emergency Response Program serves as a safety net to States, local and private first responders for situations involving actual and/or threatened of environmental emergencies. The program supports the White House National Essential Functions through our Primary Mission Essential Function (PMEF). Specifically, EPA's PMEF is to prevent, limit, mitigate or contain chemical, oil, radiological, biological, and hazardous materials during and in the aftermath of an

accident, natural or man-made disaster in the United States, and provide environmental monitoring, assessment and reporting in support of domestic incident management.

In the event of a shutdown, Regional Offices should utilize existing procedures to maintain their phone and response on-duty On-Scene Coordinator(s) to maintain and ensure prompt support of environmental emergency responses that requires EPA attention and/or action. HQ Offices with emergency response responsibilities should also maintain their duty personnel to ensure prompt support and/or oversight of environmental emergency responses that require EPA attention and/or action.

In the event of a water related incident where the threat to human life or property is imminent, individuals from the **Water Security Division (WSD) Emergency Response Team** would need to return to work in order to assist with EPA's response efforts. Also, certain technical specialists from the Office of Water (OW) Incident Support Team (IST) would need to return to work depending on the type of emergency. The WSD individuals would need to report to their normal workstation or to the EPA Emergency Operations Center. Duties would include: NICC Reporting on SSA issues; setting up the Water Desk; running the Water Desk (i.e. managing e-mails and calls, reaching out to Technical Specialists to answer inquiries; developing a schedule for Water Desk staffing from among the Incident Support Team members who are also on call; attending NICT meetings; drafting OW management reports; reviewing and approving contractor invoices and emergency travel authorizations. In addition, EPA may draw upon **technical specialists** as relevant expertise contingent on the nature of the emergency.

EPA has been designated the lead for international radiological events and was contacted by FEMA on March 11, 2011, to begin monitoring radiation as an imminent threat to human life and public safety as a result of damaged caused by an earthquake and tsunami to a nuclear power plant in Japan. As part of a national response, work is being conducted from various EPA facilities and includes the RADNET and deployable monitoring systems to collect samples and provide data on the radiation levels in the air.

Legal Counseling, Litigation, and Law Enforcement Activities

Law enforcement personnel that protect human life and property from imminent threat will be excepted for the time minimally necessary to carry out excepted activities. Attorneys engaged in counseling, enforcement, administrative matters, or litigation will be excepted only for the time necessary to conduct an excepted activity. Attorneys who charge their time to appropriations impacted by the funding lapse will be excepted to support excepted or exempted activities if there is a necessarily implied authorization for the attorneys to continue to work. A necessarily implied authorization exists when a statute directs EPA or a governmental entity to perform an activity during a lapse in appropriations and non-performance of an attorney's support for that activity during the funding lapse would undermine implementation of the terms of the statute. DOJ has advised that the courts will remain open during a shutdown, but DOJ will request stays of some litigation and court ordered deadlines for the duration of the shutdown. If a court does not grant the stay, DOJ expects EPA to continue to provide the legal or technical support necessary to meet any court deadlines or orders, including but not limited to court appearances and response to discovery requests. Therefore, EPA will continue to support DOJ as needed.

6. EXEMPTED ACTIVITIES:

Consistent with prior Agency decisions when faced with shutdown situations, the Administrator has exempted programmatic activities funded with Leaking Underground Storage Tanks (LUST) appropriation.

The Administrator has also exempted Superfund and Oil Spill Response appropriation activities limited to staff that:

- a. charge 50% or more of their time to those appropriations; and
- b. senior management has identified as necessary to support exempted activities

Further, any work performed by these employees is to be conducted only for the hours/days it takes to perform exempted activities.

The Superfund activities that are considered “exempted” are those activities at Superfund sites where the fund-financed Remedial Action or Removal has already started (i.e., there is ongoing construction at the site or action is necessary to maintain plume control or remedy integrity), and funds are available in a contract, Interagency Agreement or cooperative agreement. Also, all fund-lead work, e.g., Remedial Investigation/Feasibility Study (RI/FS), Remedial Design (RD), being conducted pursuant to an existing State Superfund Cooperative Agreement or an Interagency Agreement may continue as described under section 7(B) (4) of this plan, as well as all PRP funded work at Superfund sites (e.g., Preliminary Assessment (PA), RI/FS, RD), including Federal Facility lead work and work funded through site-specific special accounts. EPA staff is to be available to conduct only exempted oversight activities and staff is to be available, to the extent needed, if such staff charge 50% or more to the Superfund appropriation. (Note: Staff supporting approved, exempted Superfund work must charge the Superfund for their time). As noted above, any work performed for exempted activities is to be conducted only for the hours/day(s) it takes to perform those activities.

7. SHUTDOWN ACTIVITIES:

A. SHUTDOWN PLANNING:

Shutdown activities should be conducted in a manner whereby expedient reactivation of normal operations and activities may occur when funds are made available.

Senior Resource Officials (SROs) must develop and submit a list of personnel (including necessary PHS Officers) essential to carry out an orderly shutdown to the Office of Administration and Resources Management (OARM). In preparing this list, SROs should consider the specific actions that would be necessary to affect an orderly shutdown of the Agency, giving primary consideration to protecting life and safeguarding government property and records. The list should not replicate the list to maintain the Agency’s Continuity of Operations (COOP) since this list will be to shutdown Agency operations. Each SRO is responsible for informing their employees if they are on the shutdown list.

The list should indicate which personnel would be necessary to perform excepted activities following a shutdown. The SRO is responsible for informing their employees if they are on the excepted activities list.

The shutdown and excepted personnel list is subject to review and approval by OARM. OARM may consult with OCFO and OGC as necessary. The list should identify each person's name,

employee identification number, position, Office/Division, and function. The list should continually be revised as necessary and will be kept on file by the Office of Administration and Resources Management (OARM). Each SRO must also provide the list of names of the excepted and any exempted personnel to the facility manager at each EPA location. Only those employees designated as excepted or exempted personnel will be allowed into EPA facilities after a shutdown is completed.

Individual Offices in OARM and OCFO may provide additional guidance relating to their specific operations in the event a shutdown.

The Assistant Administrator (AA) for OARM will keep the EPA Administrator apprised of the Agency's shutdown activities. The AA for OARM, and other appropriate Offices designated within that Office, will coordinate efforts as necessary with Regional, Headquarters, and field offices.

A limited number of employees performing excepted and/or approved exempted activities (e.g., emergency response personnel) may be designated as standby and must be included in any excepted or exempted personnel list.

Assistant/Regional Administrators may need to identify additional employees for excepted activities in an emergency situation. These individuals will not be in a pay status prior to being recalled to work and will be added to the list of excepted personnel after being recalled. If funds are available to support additional employees in an emergency situation, Assistant/Regional Administrators may add the individuals to the approved exempted list and the employee will be recalled to work and will assume a pay status. Assistant/Regional Administrators must notify the Office of Administration and Resources Management and the Office of the Chief Financial Officer of any changes to their approved lists for payroll, travel and other purposes and also notify the local facility/security manager for building access.

B. SHUTDOWN IMPLEMENTATION:

In the event a funding hiatus exists due to the lack of an Appropriations Act or a Continuing Resolution, the following restrictions apply to all Agency appropriations:

1. **Halt Obligations:** In the event of a shutdown in the absence of an appropriations act or a continuing resolution, EPA will stop incurring new obligations other than those supporting excepted or approved exempted activities, and shutdown operations.

Under the authority of the ADA (31 USC 1342), federal officials may incur obligations as necessary for excepted activities such as emergencies involving the safety of human life or the protection of property where the threat to life or property is imminent and for orderly termination activities. Additionally the:

- a. U.S. Government has legal authority to incur obligations to pay its workforce for the approximate one-half day (4 hours) furlough activities and necessary Agency shutdown activities estimated not to exceed five days;
- b. U.S. Government has legal authority to incur obligations to pay costs incurred in conjunction with equitable adjustments for work stoppages on contract and grant activities; and

- c. U.S. Government has legal authority to incur obligations to pay for infrastructure costs associated with shutdown and excepted activities such as rent, telephone service, etc. which will be incurred until appropriations have been provided.
- d. U.S. Government has legal authority to incur obligations to pay approved travel costs incurred in by excepted personnel in the performance of excepted activities.

Additionally, EPA may incur obligations to pay approved travel costs incurred by exempted personnel in the performance of exempted activities to the extent that there is carryover or other funds available for obligations to pay the travel costs.

The authority to incur the obligation to pay does not extend to the actual disbursement. Payment for these obligations will not be disbursed until the resumption of normal Agency activities following the shutdown when an Appropriations Act or Continuing Resolution is enacted.

2. **New Contract Obligations:** Unless necessary for excepted activities or for approved exempted activities, no new obligations for contracts including the exercise of options, may be entered into beginning with the first day of a fiscal year when an appropriations act or a continuing resolution has not been enacted or on the first day immediately following the expiration of a continuing resolution and no new appropriations act or continuing resolution has been enacted. Options exercised prior to the start of the new fiscal year already contain a "subject to availability of funds" clause to provide for any lack of funding in the new fiscal year. If a new obligation is necessary for an excepted or exempted activity, the National Program Manager (NPM) is to be consulted who will then consult with other organizations such as OARM and OCFO.
3. **Existing Contract Obligations:** EPA has over 4,200 ordering documents which includes contracts, delivery orders, work assignments and task orders. Contracting Officers may not issue any new work assignments, task or delivery orders, unless for excepted activities or approved exempted activities. Contracting Officers, working in conjunction with Project Officers, shall direct contractors to refrain from working on existing funded contracts that do not entail excepted or exempted activities

EPA may issue additional guidance to determine whether work under existing contracts not necessary for excepted or exempted activities may continue in accordance with the terms and funding limitations in contracts where the work has been funded. EPA employees will not be available to make payments until the shutdown ends.

4. **Existing Grants, Cooperative Agreements, and Interagency Agreements (IAs):** EPA has over 5,000 active assistance agreements and over 1,500 active interagency agreements. With the exception of the Senior Environmental Employment (SEE) program, recipients of funded grants and cooperative agreements can continue work on their projects during any EPA shutdown. EPA staff will not be available to make payments until the shutdown ends. Grant recipients not designated as "high risk" and currently approved to utilize the automated standard application payment (ASAP) system may make drawdowns of authorized obligated levels during a shutdown. Recipients must stop work if they reach a point at which they require EPA involvement or approval. Recipients should maintain documentation of any allowable costs associated with the work stoppage. Recipient staff assigned to EPA facilities will not be allowed access to those facilities. If they can satisfactorily continue work off-site, the project can continue. SEE enrollees will be

notified of furlough in accordance with their grant procedures. Additional guidance will be provided through the Agency's SEE Program Manager.

EPA program offices in conjunction with the Office of Grants and Debarment and in consultation with the other agency will determine if work under any funds-in IAs is necessary for shutdown, excepted, or approved exempted activities. If not, work on such agreements will stop. Other agencies can continue to work on fully funded funds-out IAs if the other agency is not shut down. However, other agencies must stop work if they reach a point at which they require EPA involvement or approval. If the other agency is closed, that agency in consultation with EPA will determine whether activities under funds-out IAs are necessary for shutdown or are for excepted or exempt activities.

EPA may issue additional guidance to determine if work funded under existing IAs, not involving excepted or exempted activities, may continue.

5. **Suspend Travel:** There should be no travel in the absence of an appropriations act or continuing resolution except for travel necessary for excepted activities or travel necessary to carryout approved exempted activities where there is carryover or other funds available to pay the travel costs of the exempted personnel. All personnel in travel status will return to their duty station as soon as possible, unless continued travel is essential for accomplishing the orderly shutdown of the organization or for excepted or approved exempted activities. EPA employees will not be available to make payments until the shutdown ends.

In the event of a likely shutdown, the Office of International and Tribal Affairs (OITA) will provide each Deputy Assistant Administrator (DAA) and Deputy Regional Administrator (DRA) a list of staff currently on international travel. The information will include a traveler's hotel and emergency contact information so Offices and Regions can reach those employees.

Employees assigned overseas (OCONUS) are not in travel status. The overseas location is their permanent station. OCONOS employees in temporary quarters during the furlough will remain in temporary quarters. If OCONOS employees are not designated as essential or exempted, they would not report to work.

Employees on extended TDY travel where a detail personnel action (SF52) was issued and funded should follow instructions given by the receiving office. The employee would not return to their home location during a shutdown unless instructed.

6. **Process Payroll:** OCFO's Office of Financial Services (OFS) must assure delivery of paychecks by electronic transmission.
 - a. OFS will maintain staff to continue payroll processing for the last full pay period or any partial pay period prior to the shutdown. The Payroll Office will also begin reconciliation and closeout activities.
 - b. OFS will not process any subsequent payroll(s) during the shutdown for excepted or shutdown personnel until the end of the shutdown in accordance with current DFAS Shutdown Policy.

- c. OFS will process time and attendance records for exempted employees for subsequent payroll(s) during the shutdown only if DFAS maintains its civilian payroll operations.
 - d. OFS will notify all employees prior to the initiation of any furlough action, with instructions regarding the completion of electronic time cards.
7. **Suspend All (other than payroll) Non-Essential Financial Transactions:** OCFO's Office of Financial Services (OFS) will notify all Finance Centers to secure cash funds, receivables, collections, and all financial records. The processing of requests for payments from contractors, grantees, IA recipients for obligations incurred prior to shutdown generally are not considered emergency operations.
- a. OFS Finance Centers and Staff will suspend all but emergency actions and Agency shutdown activities until enactment of an Appropriations Act or Continuing Resolution.
 - b. Instructions will be provided concerning operations of the Agency's core financial management system for excepted or exempted activities prior to suspension of Agency operations. The Agency's core financial management system will be used to monitor obligations for excepted or exempted activities during a shutdown.
8. **Personnel Activities:** EPA must not hire any new personnel in the absence of an Appropriations Act or a Continuing Resolution. The Agency's human resources shared service centers will process the required personnel actions to affect the furlough and will notify employees of their rights and benefits while they are in furlough status in accordance with OPM and OMB policy. OARM's Office of Human Resources should process furlough related documents for PHS employees according to guidance from HHS.
9. **Alternate Work Schedules:** All Alternate Work Schedules (AWS) must be stopped unless the AWS is for an excepted or approved exempted activity.
10. **Suspend Telework Activities:** All telework activities must be stopped unless the telework is for an excepted or approved exempted activity.
11. **Information Technology (IT) Systems:** Unless otherwise identified as being a Mission-critical system that would support activities outlined in (Section 5 Excepted Activities or Section 6 Exempted Activities) of this Contingency Plan; most Agency IT systems, including Network operations, should be scaled back to basic operational status. This means eliminating all activities associated with upgrades, development, deployment and scaling back contract support to minimal levels in order to provide support for Excepted and Exempted Activities and on-call activities (both Fed and Contractor). This will ensure the protection of government records, that information and cyber security controls are in place, and assist in reactivating once the period of the shutdown is over.

OARM will coordinate with the Chief Information Officer (CIO) and the Office of Environmental Information (OEI) to identify which systems will be required for continued operation during the period of a shutdown. OEI will work with the Senior Information Officials in each Program and Region to identify a list of these mission critical systems and

provide guidance regarding how continued operation of those systems will be accomplished as well as the orderly shutdown and securing of other IT systems and devices.

12. **Protection of Non-Personnel Records:** Only inventories of vital records will be made available during an agency emergency or shutdown situation. Vital records are those records that are needed to perform the most critical functions of the agency and those needed to protect legal and financial rights of the Government and of the persons affected by its actions. Vital records also include emergency plans and related records that specify how an agency will respond to an emergency.

It is essential to secure records in accordance with the Agency's Records Management Policies that affect the rights of the government, private entities and individuals, any other records that contain Confidential Business Information, Privacy Act Information, information responsive to active or pending litigation, or otherwise sensitive information (including electronic records).

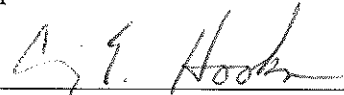
EPA detailed records management guidance is contained in:

- CFR Chapter XII, Subchapter B, Records Management, 36 CFR Part 1223 (Managing Vital Records)
- EPA Records Management Policy, CIO 2155.1
- EPA Vital Records Procedures, CIO 2155. P01.0

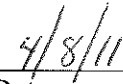
8. **NOTIFICATION of RESUMPTION of ACTIVITIES:**

- A. OCFO will notify OARM and Agency senior managers of enactment of the necessary funding mechanism (i.e., either a Continuing Resolution or an Appropriations Act).
- B. OARM will advise all employees to monitor public news broadcasts and OPM's internet site (www.opm.gov) to obtain updated information on the status of a pending Appropriations Act or a Continuing Resolution.
- C. OARM will coordinate with OEI, as necessary, to communicate updated status reports and actions necessary to return to normal Agency operations.
- D. Contracting Officers will notify contractors of funds availability and OGD will notify recipients of funds availability.

9. **SUPERSESSON:** This Contingency Plan supersedes any other EPA guidance or Order prior to this date.



Craig E. Hooks, Assistant Administrator
Office of Administration and Resources Management



Date

US ENVIRONMENTAL PROTECTION AGENCY
Estimated Excepted/Exempted Personnel
As of April 7, 2011

	On-Board Total	Excepted	Exempted
Office of the Administrator	499	19	0
Office of International Activities and Tribal Affairs	88	2	0
Office of Administration and Resources Management	798	39	45
Office of the Chief Financial Officer	383	39	0
Office of Environmental Information	415	15	0
Office of Chemical Safety and Pollution Prevention	1219	15	0
Office of Research and Development	1932	65	0
Office of Air and Radiation	1305	85	0
Office of Water	657	11	0
Office of Inspector General	341	15	0
Office of General Counsel	207	16	0
Office of Solid Waste and Emergency Response	579	37	33
Office of Enforcement and Compliance Assurance	888	104	0
HQ Program Total	9311	462	78

		Excepted	Exempted
Region 1 (Boston)	674	23	54
Region 2 (New York)	909	37	140
Region 3 (Philadelphia)	929	42	142
Region 4 (Atlanta)	1050	28	68
Region 5 (Chicago)	1249	30	57
Region 6 (Dallas)	877	30	69
Region 7 (Kansas City)	581	28	19
Region 8 (Denver)	629	12	62
Region 9 (San Francisco)	866	83	75
Region 10 (Seattle)	646	29	92
Regional Total	8410	342	778

EPA's Total:	17721	804	856
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MEMORANDUM**SUBJECT:** Emergency Employee Furloughs Due to Absence of FY 2011 Appropriations**FROM:**_____
[Appropriate] Assistant Administrator or Regional Administrator**TO:** EPA Employees Subject to Furlough

EPA staff demonstrate their personal commitment to the achievement of EPA's mission each day. With great regret, I must inform you that in the absence of either an FY 2011 appropriation or a continuing resolution for the Agency, no further financial obligations may be incurred by the Agency, except for those related to the orderly suspension of EPA's operations or performance of excepted activities. These excepted activities are defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies dated November 17, 1981.

Because your position's duties are not covered by either of these two exceptions, you will be placed in a furlough status effective _____ (*enter date*). This action is being taken because of a sudden budget emergency requiring curtailment of the Agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d)(2) and under 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees. This furlough is not expected to exceed 30 calendar days.

In the event other employees in your competitive level,¹ or organization (in the case of SES), are not being furloughed, this is because these employees are performing duties required for the orderly suspension of Agency operations or they are performing one of the excepted activities defined in the OMB memorandum referenced above.

You should monitor public news broadcasts and the Office of Personnel Management internet site (www.opm.gov) to obtain updated information on the status of funding. When you hear that a continuing resolution or an FY 2011 appropriation for EPA has been approved, you will be expected to return to work on your next regular duty day. You may also call 1-888-EPA-TALK for updated information regarding this furlough.

During the furlough, you will be in a nonpay, nonduty status. During this period, you will not be permitted to serve as an unpaid volunteer and there will be no access to Agency work stations or EPA space until funding is approved and Agency employees are recalled to work. Only personnel who are designated as authorized will be granted access to EPA occupied space. You may not access Agency information or communications systems for the purposes of

¹ A "competitive level" is generally defined as all positions in an agency organizational unit and geographical location which are in the same grade and classification series, and which are similar in duties. See 5 CFR 351.403(a)(1).

performing work. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled. Your benefits coverage is not affected by this furlough. You may be eligible for unemployment insurance. For more information about the unemployment insurance eligibility and application process in your state, please reference the Department of Labor's website (<http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>) or contact your state employment office. Standard Form 8, "Notice to Federal Employees About Unemployment Compensation," is attached for you should your state employment office request it.

Employee timecards should reflect the actual time/hours earned or used for the dates prior to the furlough taking effect. On the first day of the furlough, employees should record up to four (4) regular duty hours with the remaining hours charged to the Furlough Time Reporting Code (FURLH). The FURLH Time Reporting Code will be applied for the duration of the furlough.

Employees in the following categories may appeal this action to the Merit Systems Protection Board (MSPB):

- Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment
- Employees in the excepted service who have veterans preference and have completed one year of current continuous service in the same or similar positions as the one they now hold
- Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less
- SES career appointees.

Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to do so, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an MSPB appeal, notify (**insert name**, Human Resources Shared Service Center Director – **insert SSC location** (phone: **XXX-XXX-XXXX** or email: **XXXXXX.XXXX@epa.gov**) to obtain a copy of the MSPB regulations, the appeal form, and the address of the MSPB Regional Office having jurisdiction over your appeal. Bargaining unit employees may grieve this action as provided for in the collective bargaining agreement applicable to them, or may appeal to MSPB in accordance with the procedures outlined above, but not both. If you are a bargaining unit employee and wish to file a grievance, Ms. Watson can provide you with a copy of the applicable negotiated agreement which contains the negotiated grievance procedures.

If you believe that this action is being taken in whole or in part because of discrimination based on race, color, religion, sex, national origin, disability, marital status, political affiliation,

or age, you may include this allegation in your appeal to the MSPB. Alternatively, you may file a discrimination complaint with EPA by contacting an Equal Employment Opportunity Counselor within forty-five (45) calendar days of the effective date of this action in accordance with the procedures contained in 29 CFR Part 1614.

We regret the need to take this action and look forward to your return to the Agency as soon as funding is authorized.

Attachment

TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM
UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM
NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE

This form has been given to you because (1) you have been separated from your job, or (2) you were placed in a nonpay status, or (3) your records have been transferred to a different payroll office.

Unemployment insurance (UI) for Federal workers. When unemployed, Federal workers may be entitled to UI benefits similar to those of workers in private industry. If you become unemployed or are in a nonpay status and want to FILE A CLAIM, go to the nearest LOCAL PUBLIC EMPLOYMENT SERVICE OFFICE of the STATE EMPLOYMENT SECURITY AGENCY to register for work and file your claim for UI. Your ELIGIBILITY for UI CANNOT be determined until AFTER you file a claim. DO NOT DELAY filing a UI claim; if you wait, your unemployment benefits may be reduced or you may not qualify for any benefits.

To help EXPEDITE your claim, take THIS FORM with you, your SOCIAL SECURITY ACCOUNT NUMBER CARD, the OFFICIAL NOTICE of your most recent SEPARATION or your present NONPAY status (Standard Form 50 if available), EARNINGS and LEAVE statements, or similar documents that indicate you were employed by a Federal agency.

FEDERAL AGENCY will insert in the box:

1st line – Parent Federal Agency Name and 3 digit code number

2nd line – Major Component (if any)

3rd and 4th line – complete address to which all forms pertaining to a claim should be sent (ES-931, 931A, 934, 936, and notices of appeal, hearings, and determinations)

3 Digit
552
Identification
FEDERAL AGENCY

**Talx UC Express - Agent for the
U.S. Environmental Protection Agency
P.O. Box 66945
St. Louis, MO 63166**

To be completed by the
Federal Agency:
Contact Name/Office
EPA Talx

Telephone No. (*include area code*)
1-800-367-5690

KEEP THIS FORM and **TAKE IT WITH YOU** if you file a UCFE/UI claim for unemployed Federal workers provided by Federal law (U.S. CODE, Title 5, Chapter 85). For more information about UCFE/UI, read the REVERSE SIDE of this form.

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM
UNEMPLOYMENT INSURANCE (UI) FOR FEDERAL WORKERS
TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM

GENERAL INFORMATION:

1. WHO WILL PAY UNEMPLOYMENT BENEFITS?

If you are eligible, you will be paid by a State employment security agency under the provisions of its unemployment insurance (UI) law. The amount of your regular weekly benefits and the period for which benefits will be paid will generally be determined by the law of the State in which you had your last Official Duty Station. This Duty Station will be printed on your final "Notification of Personnel Action", SF-50. If you have received all the regular benefits for which you are eligible, you may, under certain circumstances, become eligible for additional weeks of extended benefits; check with a State local office official. If your last duty station was outside the United States, you will not be eligible until you return to the United States, including the District of Columbia, Puerto Rico, and Virgin Islands. Your benefit rights will then be determined under the law of your State of residence.

UCFE/UI for unemployed Federal workers is paid from U.S. Government funds. No deductions were taken from your pay to finance these benefits

2. UNDER WHAT CONDITIONS WILL I BE ELIGIBLE?

All State UI laws require that:

- a. You must be unemployed, able to work, and available for suitable work; (In some cases, you may be eligible if you are employed less than full time);
- b. You must register for work and file a claim at a local public employment service/UI claim office;
- c. You must continue to report to the office as directed; and
- d. You must have had a certain amount of employment/wages within a base period of 1 year specified in the State law and have been separated through no fault of your own.

All State UI laws will deny you benefits for such reasons as:

- a. Quitting your job voluntarily without good cause or being discharged for misconduct connected with work; or
- b. Refusing an offer of a suitable job without good cause.

Some State UI laws deny or reduce UI benefits for certain types of payments you may receive (retirement, severance, and/or lump-sum amount for unused, accrued annual leave).

3. DO I HAVE THE RIGHT OF APPEAL?

Yes. If a determination is made denying you benefits, you have the right to appeal as provided in the applicable State law.

4. ARE THERE ANY PENALTIES?

Yes. If you willfully make a false (fraudulent) claim, you may be fined, imprisoned, or both. If you make a mistake in giving information when you file your claim, notify the local UI claim office as soon as you discover the mistake: prompt notification may avoid a penalty.

(The above statements are issued for general information; they do not have the effect of law, regulation, or ruling).